

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3256 OF 1999

WITH

SPECIAL CIVIL APPLICATION NOS.3253 OF 1999, 3255 OF 1999,
3254 OF 1999, 3257 OF 1999, 3258 OF 1999, 3252 OF 1999,
3251 OF 1999

WITH

SPECIAL CIVIL APPLICATION NOS.10130 OF 1998 & 10135 OF
1998

WITH

SPECIAL CIVIL APPLICATION NO.2704 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed
to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy
of the judgment ?
 4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950, or any order made
thereunder ?
 5. Whether it is to be circulated to the Civil
Judge?

BHARTIBEN CHANDULAL JOSHI & ORS.

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

(In SCA No.3256/99 & allied matters)

MR KG VAKHARIA, SR.COUNSEL, ASSISTED BY MR.MK VAKHARIA,
FOR PETITIONERS

(In SCA No.10130/99 & 10135/98)

MR.MK VAKHARIA FOR PETITIONERS

(In SCA No.2704/99)

MR.SN SHELAT, ADDL. ADVOCATE GENERAL WITH
MR.MG NAGARKAR FOR PETITIONER

Coram: MR.JUSTICE S.K. Keshote,J

Date of order: 02/07/1999

C.A.V. JUDGMENT

#. Re.: Special Civil Application Nos.3256/99 with
cognate matters and Special Civil Application
Nos.10130/98 & 10135/98:

Last two matters are admitted matters in which reply has
also been filed by all respondents. In the first group
of matters, arguments were heard on 23.6.99 and in the
last two petitions, arguments were heard on 24.6.99. As
in all these matters, identical issue has been raised and
as the learned counsel are also common, these matters are
being disposed of by this common order.

#. These writ petitions have been filed by primary
teachers who are working in different primary schools run
and controlled by Municipal School Board, Ahmedabad.
Looking to the size of these writ petitions, particularly
the number of documents in each case, I find that these
low paid employees have to undergo and incur heavy
expenses in filing of these writ petitions in addition to
what they have paid as professional fees to their
advocates. If we go by facts of last two cases, and
reply filed therein, it is clear that both, the State of
Gujarat and the Municipal Corporation of Ahmedabad are in
agreement that the petitioners are entitled for benefit
of Government Resolution dated 16th August 1994
whereunder it is decided to give benefit of higher
selection grade to the employees on completion of 9
years, 20 years and 31 years of services. The benefits
of higher pay scales are applicable with effect from 1st
June 1987, but the grievance of the petitioners is that
despite of lapse of five years, these petitioners were

not given benefit of that Government Resolution. The writ petitions have been filed before this Court also but even thereafter, no benefit has been given.

#. In the reply, the respondents No.1 and 2 admitted that the petitioners are entitled for benefit of this Resolution with effect from 1.6.87. It is also admitted that the State of Gujarat is ready to bear out 80% of the amount of benefits to be given to the petitioners as soon as the respondents No.3 to 5 implement the higher pay scale for the petitioners.

#. The Municipal Corporation, on its turn, is not disputing claims of the petitioners for the benefits of this Resolution but what it is stating is that its financial condition is very weak. It has given out what financial burden will come on it in case this policy is implemented from 1st June 1987. Then it has put further that because of revision of pay on the basis of 5th Pay Commission, the estimated amount of arrears to be paid to the employees is about 45 crores and 48 crores for regular increase in the salary payments. It has further been stated that the Corporation is indebted to the financial institutions to the extent of Rs.312.92 crores. So only on the basis of financial difficulties, these benefits are not being extended by the Corporation to the petitioners.

#. However, it is not the matter to be decided finally at this stage. Where 80% of the burden has to be borne by the State Government, it is a matter to be considered by the State Government whether the Corporation is justified not to extent the benefit of this Resolution where it has to only bear 20% of the burden. Further consideration which has to be made is whether on the basis of these financial difficulties, the benefits of the Resolution are to be denied to the employees of the Corporation, here, the primary teachers. In the matter of pay-scale and other monetary benefits, normally parity is being maintained between the employees of the State Government and the Corporation employees. However, because of this alleged financial difficulty, these low paid primary school teachers are not given benefit of this Resolution of the Government. To get the benefit under Government Resolution aforesaid, what they are doing is only incurring heavy expenses of litigation, both in payment of professional fees and expenses of filing petitions.

#. These are the matters not to be taken care of by this Court in judicial side at this stage. These are the

matters to be taken care first by the State of Gujarat in its administrative side. Even where really the Corporation has genuine difficulty to bear this heavy financial burden, it is for the State Government to give additional grant to it. But merely on this ground, how far it is justified for the Corporation not to implement this Resolution where the Government has extended the benefit of the same to the primary school teachers working in the primary schools run by the Corporation with the financial aid of State Government to the extent of 80%.

#. Otherwise also, in case these benefits are denied to this class of persons, there may be a possibility of raising of voice of discrimination. However, at this stage, nothing finally needs to be decided by this Court in its judicial side. This is a matter to be taken care of and decided firstly by the high powered Committee at the State level. These writ petitions at this stage are dismissed. The Chief Secretary, Government of Gujarat, is directed to constitute a high powered Committee to decide this question under his chairmanship and other members are to be the Secretary to the Department concerned, the Finance Secretary, Government of Gujarat, the Law Secretary, Government of Gujarat and the Commissioner of Municipal Corporation, Ahmedabad. The high powered committee so constituted shall decide this matter, i.e. regarding claim of the petitioners for the benefit of higher pay scale within a period of two months from the date of receipt of Writ of this order. In case the Committee considers that the ground on which the Corporation is justifying its action not to extent the benefit of the higher pay scale to the petitioners is reasonable and justified or where the Committee considers that the State Government cannot give any further grant beyond 80% to meet out this additional financial burden by the Corporation, it has to record reasons, meaning thereby, a reasoned decision has to be given and the copy of the same may be sent to Mr.K.G.Vakharia, Senior Advocate, by registered post A.D. In case after going through the decision, Mr.Vakharia feels that the decision is not legally correct, liberty is granted to the petitioners for revival of these Special Civil Applications on filing a simple note. Subject to the directions aforesaid these Special Civil Applications are dismissed at this stage. Rule in Special Civil Application No.10130 of 1998 and Special Civil Application No.10135 of 1998 is discharged. No order as to costs.

#. Re.: Special Civil Application No.2704 of 1999:

This writ petition arises from the judgment of the Gujarat Secondary Education Tribunal in Application No.613 of 1996 dated 30th September 1998 in the matter where the Tribunal has decided that the primary school teachers who are working in the primary schools run and controlled by the Municipal Corporation of Ahmedabad are entitled for receiving three tier pay scale (higher scales) as per the Government Resolution dated 16th August 1994.

#. The learned counsel for the petitioner contended that so far as the decision of the Tribunal under which the primary school teachers of the Corporation were held to be entitled for receiving three tier pay-scale, i.e. higher pay-scale as per the Government Resolution dated 16th August 1994, he has no objection, nor he is challenging that part of the judgment in this Special Civil Application.

##. Otherwise also, there could not have been any merits in challenging this part of the judgment of the Tribunal as it is no more now in dispute as what I have already seen while deciding other matters, that the primary school teachers of the Corporation are entitled for receiving three tier pay-scale as per the aforesaid Government Resolution.

##. The learned counsel for the petitioner contended that this decision of the Tribunal may not be taken as if all the other employees of the Corporation are entitled for the benefit of the Government Resolution dated 16th August 1994. Under the judgment impugned in the Special Civil Application, the Tribunal has only decided reg. claim of receiving three tier pay scale as per the Government Reslution dated 16th August, 1994 of the primary school teachers of the Corporation and it has to be read only to that extent. It is hereby made clear that this decision will not be taken as if the Tribunal has decided that all the employees of the Corporation are entitled for receiving three tier pay-scale as per the Government Resolution dated 16th August, 1994. Subject to these observations, this writ petition is dismissed. However, while the high power committee, as constituted by this Court, considers the case of primary school teachers of the Corporation regarding giving actual benefits of the Government Resolution dated 16th August, 1994, it will also consider and keep in mind the fact that the Tribunal has held in their favour that they are entitled for receiving three tier pay-scale as per the aforesaid Government Resolution and that decision has not

been challenged by the Corporation on merits.

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(sunil)